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8 **IN THE UNITED STATES BANKRUPTCY COURT**

9 **FOR THE DISTRICT OF ARIZONA**

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11 In re:

12 CHARLES THOMAS BROWN d/b/a TOM
13 BROWN PREFERRED TRUST COMPANY,

14 Debtor.

15 MAUREEN GAUGHAN, Chapter 7 Trustee

16 Plaintiff,

17 v.

18 ANN AKAMINE, et al.

19 Defendants.

Proceedings Under Chapter 7

No. B97-14228 PHX GBN

Adversary Proceeding No. 99-00746

**MOTION FOR ENTRY OF ORDER
ESTABLISHING PROCEDURES IN
ADVERSARY PROCEEDING**

DATE:

PLACE: [TO BE SET]

TIME:

20 Maureen Gaughan, the Chapter 7 Trustee ("Trustee") in the above-captioned case, moves the Court
21 for an entry of an Order establishing procedures in this adversary proceeding as follows:

22 1. Charles Thomas Brown ("Brown"), the debtor in this case, operated a Ponzi Scheme that
23 defrauded hundreds of investors and produced claims against the bankruptcy estate of approximately \$23
24 million;

25 2. As is common in all Ponzi Schemes, Brown utilized money received from new investors to
26 pay prior investors to create the impression that he was operating a legitimate enterprise;

1 3. Brown's Ponzi Scheme eventually collapsed and Brown has since been sentenced to jail for
2 an extended period of time;

3 4. In addition to this adversary proceeding (the "Complaint"), the Trustee has filed three other
4 adversary proceedings that collectively name almost 300 defendants seeking to recover certain transfers by
5 Brown both prior to and after the bankruptcy under various theories, including as avoidable transfers under
6 bankruptcy and state law;

7 5. The Complaint filed by the Trustee includes issues of law and fact that are common to all or
8 most of the defendants as well as individual issues of law and fact specific to each defendant;

9 6. The lawsuit filed by the Trustee will involve literally thousands of transfers and tens of
10 thousands of documents. Moreover, the discovery in the matter may be extensive given the failure of Brown
11 to maintain complete records and his refusal to complete schedules and statements of affairs and answer
12 questions under oath on the basis of his Fifth Amendment privilege against self-incrimination. Much of the
13 information upon which the Trustee relies was gathered through extensive discovery with approximately 25
14 third-party banks and financial institutions in which Brown transacted business. Numerous investors have
15 responded to the Trustee indicating that her information is incomplete or inaccurate. Unfortunately, many
16 investors also do not have complete or accurate information. Accordingly, obtaining complete and accurate
17 information, both for the Trustee and all of the defendants, will be much more difficult and complicated than
18 in regular avoidance litigation;

19 7. The Trustee requests entry of an order establishing certain notice, motion and other
20 procedures in this adversary proceeding to manage the litigation, provide due and appropriate notice to the
21 defendants and minimize costs and inconvenience for all parties;

22 8. In connection with the service of the complaint and summons, the Trustee proposes to send
23 the defendants in this litigation a letter explaining why the Trustee has sued the defendants, many of whom
24 believe that they are victims of Brown's Ponzi Scheme. Included as part of the Trustee's letter will be a
25 written settlement proposal from the Trustee that will provide each defendant an opportunity to accept a
26 settlement without answering the lawsuit. In addition, the Trustee will request each defendant to provide any

1 additional or corrective information on the alleged transfers from Brown or any special circumstances they
2 wish to present to the Trustee for consideration in the settlement negotiations or in connection with the
3 litigation. The Trustee anticipates providing extensions of time to answer or otherwise respond to the
4 Trustee's Complaint to any defendant who wishes to provide additional information to the Trustee.

5 9. The defendants named in the Complaint have been developed, in large part, through an
6 analysis of the bank records of Mr. Brown. Many of the defendants were at the time of the transfers and are
7 now married to individuals unknown to the Trustee and unnamed as defendants in the Complaint. Also, some
8 of the defendants have advised the Trustee that the transactions were actually conducted in the name of a
9 trust or other related party, although not apparent from the information developed by the Trustee. The
10 Trustee believes it may be necessary to add spouses, ex-spouses or other parties during the course of this
11 litigation in order to provide them notice and to bind their marital community (or certain sole and separate
12 property that they now may own if they were divorced after the transfer) or to add the correct party. The
13 Trustee proposes a simplified procedure for amending the Complaint to add a spouse, ex-spouse or other
14 party that would not require re-service of the Complaint upon all other defendants. The Trustee proposes
15 a standing order to authorize amendments to the Complaint to add spouses, ex-spouses or other party by
16 appropriate service upon the specific parties affected and providing them with a reasonable time for them to
17 object and to answer or otherwise respond, without sending notice or copies to other parties. Likewise, the
18 Trustee proposes that the defendants be excused from serving copies of their answers or other responsive
19 pleadings or other motions upon all defendants, unless such filing impacted one of the defendants.

20 10. In order to control the litigation, the Trustee proposes the following procedures:

21 a. Imposing a moratorium on any discovery, motions and other actions (other
22 than answers or initial responsive pleadings and amendments to add a party) in the litigation for a reasonable
23 period of time (at least 90 days) to permit the defendants time to respond to the proposed settlement and
24 provide additional or corrective information to the Trustee;

25 b. Establishing regular status hearings before the Court to control litigation,
26 resolve issues and present settlements to the Court for approval. In connection with these periodic hearings,

1 the Trustee proposes that the Court establish in advance regularly scheduled hearings and set dates prior to
2 each hearing as deadlines for filing any motions, responses or objections for matters scheduled for the
3 upcoming hearing;

4 c. Entering a standing order authorizing the amendment of the Complaint to add
5 spouses, ex-spouses or other parties as defendants upon appropriate service only upon the respective spouses,
6 ex-spouses or related party, with reasonable notice to them (and not to all other defendants) of the right to
7 1) object within a reasonable time, 2) adopt any pleadings already on file or 3) file their own answer or
8 responsive pleading;

9 d. Entering orders controlling the service of notices and copies of documents in
10 the case to limit or avoid unnecessary noticing expenses;

11 e. Establishing a document depository whereby all documents, including
12 discovery and disclosures under Bankruptcy Rule 7026, can be deposited into a central depository and
13 available for inspection by any party during established hours without requiring all of the defendants to be
14 copied on every document in the case, many of which will have no particular relevance to other defendants.
15 The Trustee anticipates delivering into this depository non-privileged documents that would be available for
16 review and inspection during established hours on some reasonable advanced notice without requiring formal
17 discovery requests. In addition to delivering documents to the document depository, all parties would still
18 be copied and served with any pleading, motion or document that pertains to each party directly;

19 f. Imposing reasonable user charges for the document depository to cover some
20 or all of the expenses, which expenses the Trustee believes will be significantly less for all parties than if a
21 document depository were not used;

22 g. Establishing a uniform system of "bates stamping" documents, delivering
23 documents and maintaining records;

24 h. Considering the possible implementation of the use of electronic filing in this
25 adversary proceeding for some or all purposes; and

26 11. The Trustee proposes that this Motion be served upon all defendants along with a notice

1 scheduling a hearing on this Motion. In addition to requiring any party who opposes the Motion to file any
2 objection to the relief requested, the Trustee also solicits suggestions from defendants as to how to streamline
3 the process and minimize costs for all parties.

4 WHEREFORE, the Trustee requests that the Court set a hearing on this Motion for the purpose of
5 discussing and implementing appropriate procedures to control this adversary proceeding.

6 DATED this ____ day of November, 1999.

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8 RYLEY, CARLOCK & APPLEWHITE

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10 By _____
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